

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

Cr. Case No.: 03-81103

HONORABLE VICTORIA A. ROBERTS

HASSAN FRANK FAYZ,

Defendant.

OPINION AND ORDER

This matter is before the Court on Defendant's Motions to Correct Sentence and Recommendation for Designation of the federal correctional institution in Morgantown, West Virginia as his place of confinement [Doc. 28]. For the reasons stated, the Court GRANTS, in part, and DENIES, in part, Defendant's motion.

Defendant seeks correction of his sentence pursuant to Federal Rule of Criminal Procedure 35(a), which states:

Within 7 days after sentencing, the court may correct a sentence that resulted from arithmetical, technical, or other clear error.

The Sixth Circuit has found this requirement jurisdictional, and thus it is not waivable. See *United States v. Robinson*, 368 F.3d 653, 656 (6th Cir. 2004). This Court imposed sentence on February 15, 2005. Defendant's motion was filed on March 7, 2005, outside of the seven day window contemplated in Rule 35(a). Therefore, the Court must DENY Defendant's Motion to Correct Sentence.

Defendant also seeks a recommendation for designation to the federal correctional institution in Morgantown, West Virginia. Defendant seeks confinement at the Morgantown facility because it would provide "the opportunity to participate in

needed education and rehabilitative programs contained there." The Government does not oppose this portion of Defendant's Motion. Generally, decisions regarding the location of confinement during a prison term are within the exclusive province of the Bureau of Prisons, but the Court will recommend that Defendant be incarcerated at the federal correctional institution in Morgantown, West Virginia.

The Court DENIES Defendant's Motions to Correct Sentence and GRANTS Defendant's Motion for Recommendation for Designation of the federal correctional institution in Morgantown, West Virginia.

IT IS SO ORDERED.

S/Victoria A. Roberts

Victoria A. Roberts

United States District Judge

Dated: April 22, 2005

The undersigned certifies that a copy of this document was served on the attorneys of record by electronic means or U.S. Mail on April 22, 2005.

s/Carol A. Pinegar

Deputy Clerk